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[3125-01-M]

**COUNCIL ON ENVIRONMENTAL
QUALITY****ENVIRONMENTAL EFFECTS ABROAD OF
MAJOR FEDERAL ACTIONS****Executive Order 12144; Implementing and
Explanatory Documents**

MARCH 21, 1979.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only: Publication of Implementing Documents Concerning Executive Order 12114.

SUMMARY: On January 4, 1979, the President signed Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957 (Jan. 9, 1979)). The Council has received numerous requests for the implementing and explanatory documents. In order efficiently to respond to such public requests, the relevant documents are reprinted in this issue of the **FEDERAL REGISTER**. They include: (1) Memorandum for Heads of Agencies With International Activities, from Charles Warren, Chairman, Council on Environmental Quality, and Thomas R. Pickering, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs (February 27, 1979), and (2) White House Fact Sheet, Executive Order on Environmental and Scientific Effects Abroad (January 5, 1979).

**FOR FURTHER INFORMATION
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FEBRUARY 27, 1979.

**MEMORANDUM FOR HEADS OF AGENCIES
WITH INTERNATIONAL ACTIVITIES**

From: Charles Warren, Chairman,
Council on Environmental Quality;
Thomas R. Pickering, Assistant
Secretary of State for Oceans and
International Environmental and
Scientific Affairs.

Subject: Implementation of Executive
Order 12114.

On January 4, 1979, President Carter signed Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions. The purpose of this memorandum is to initiate the consultation process required by this Executive Order.

Section 2-1 of the Order provides that every Federal agency taking major federal actions encompassed by and not exempted from the Order,

which have significant effects on the environment outside the geographical borders of the United States, its territories and possessions, shall within 8 months after January 4, 1979, have in effect procedures for implementing the Order. This Section requires agencies to consult with the Department of State and the Council on Environmental Quality concerning their implementing procedures before placing them in effect.

Categories of federal activities or programs encompassed by the Order are listed below. The Executive Order defines the activities or programs as those which significantly harm the natural and physical environment even though on balance the agency believes the action to be beneficial to the environment.

1. Major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation. This category includes major federal actions significantly affecting Antarctica, and the oceans and weather and stratospheric conditions in areas outside the jurisdiction of any nation. Section 2-3(a).

2. Major Federal actions significantly affecting the environment of a foreign nation which is not participating with the United States in the activity and which is not otherwise involved in the action. This would include, *inter alia*, planning, financing, programming or implementing the action. Section 2-3(b).

3. Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(a) A product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk. Attached to this memorandum is an illustrative list showing the kinds of products, emissions or effluents which are covered by the Order and those that are not. Section 2-3(c)(1).

(b) A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances except for actions exempted by Section 2-5(a)(1). This category includes nuclear reactors and nuclear waste management facilities, and excludes nuclear fuel. The Department of State will act as lead agency for conducting environmental reviews for this category of actions. Section 2-3(c)(2).

4. Major Federal action outside the United States, its territories and possessions significantly affecting natural or ecological resources of global importance that are designated for protec-

tion by the President or, in the case of such a resource protected by international agreement binding on the United States by the Secretary of State. There have been no designations by the President or the Secretary of State as yet. Any agency making a recommendation to the President under Section 2-3(d) shall first consult with the Council on Environmental Quality and the Department of State. Agencies will be promptly advised of any designations made by the President and the Secretary of State under Section 2-3(d).

The State Department and the Council on Environmental Quality will be available to assist agencies in preparing their implementing procedures. Questions should be directed to: Foster Knight, 395-4616, Council on Environmental Quality; William H. Mansfield, 632-2418, Department of State.

It would be helpful in planning the consultations under the Executive Order if agencies would inform the Department of State and the Council on Environmental Quality as soon as feasible if they determine their authorities, programs, and activities are not encompassed by the Order.

ILLUSTRATIVE LIST¹ for Determining Compliance With Section 2-3(c)(1) OF EXECUTIVE ORDER 12114

1. The following is an illustrative list of the products, emissions, and effluents encompassed by Section 2-3(c)(1): asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, pesticides, mercury, beryllium, arsenic, cadmium, and benzene.

2. The following is an illustrative list of the products, emissions and effluents not encompassed by Section 2-3(c)(1): chlorine, caustic soda, ammonia, sulphuric acid, phosphoric acid, nitric acid, sulfur dioxide, nitrogen oxides, and sulfate and sulfite liquors.

[For Immediate Release, January 5, 1979]

Office of the White House Press Secretary

WHITE HOUSE FACT SHEET—EXECUTIVE ORDER ON ENVIRONMENTAL EFFECTS ABROAD

Better understanding of the effects which U.S. actions may have on the world's environment is important both for the nation's welfare and for the welfare of present and future generations of mankind. The President has signed an Executive Order which will help to carry out his Administration's strong commitment to global environmental protection through environmental review of U.S. actions affecting the rest of the world.

This Executive Order establishes for the first time government wide procedures for review of environmental effects abroad of

¹These illustrative lists are non-inclusive, for guidance in complying with Section 2-3(c)(1) of E.O. 12114. At the request of the White House these lists were prepared and agreed on by the Council on Environmental Quality and the Export-Import Bank.

major federal actions. The Order reconciles competing but legitimate goals of environmental protection and those of foreign and export policy and national security. The Order is based on my independent Constitutional authority, and also furthers the purpose of the National Environmental Policy Act and other environmental laws.

There is growing concern that governments are undertaking major actions without enough consideration of the environmental consequences. The unintended results may be to endanger health, safety, and the human environment. Under this Executive Order, federal agencies taking certain kinds of actions which may have significant environmental effects abroad will now establish procedures for taking these effects into consideration before taking action. When appropriate, agencies will make this information available to affected foreign nations.

At the same time, consideration of environmental impacts abroad bears on important foreign, economic and national security policy goals and interests. The Order is designed to minimize any adverse effects upon U.S. exports and to further the Administration's nuclear non-proliferation, national security and other foreign policy objectives.

The Executive Order applies to all federal agencies with activities outside the United States. Within eight months these agencies are to put into effect procedures for implementing the Order. The Council on Environmental Quality and the Department of State will work with agencies in preparing their implementing procedures, and will remain available to provide any advice or information that agencies may request to help them review environmental effects of their actions.

TYPES OF FEDERAL ACTIONS COVERED BY THE ORDER

For the *global commons* (such as oceans or Antarctica), the Order provides that environmental impact statements will be prepared for all major federal actions having significant environmental effects.

For *foreign countries* when their environments are significantly affected by major federal actions, agency procedures are to provide for the preparation of environmental review documents in the following situations:

—When the foreign nation affected is not participating with the United States and is not otherwise involved in the project (for example, a U.S.-financed dam in one country that cuts off water to another "innocent bystander" country);

—When the federal action provides a facility which is prohibited or strictly regulated in the United States to protect against radioactive hazards (for example, U.S. exports of nuclear reactors);

—When the federal action provides products or facilities whose principal products, emissions or effluents are prohibited or strictly regulated in the United States because their toxic effects on the environment create a serious public health risk. To clarify the kinds of products and discharges in this category, the President has directed the Export-Import Bank and the Council on Environmental Quality to prepare illustrative lists;

—When the federal action significantly affects natural or ecological resources of global importance that may in the future be designated by the President, or, in the case

of resources protected by International agreement, by the Secretary of State.

Where the environmental effects of federal actions are within foreign countries, agencies have flexibility under the Executive Order to prepare either concise environmental reviews of the issues involved, or to undertake bilateral or multilateral environmental studies. Environmental Impact Statements will not be required in these circumstances. The Order does not limit agencies from providing in their procedures for measures in addition to the government-wide requirements in the Order to further the purpose of the National Environmental Policy Act and other environmental laws.

The Order provides agencies with flexibility in developing their procedures. Certain kinds of actions or categories of actions are exempted by the Order altogether. Agencies will also be able to provide for categorical exclusions. Thus, for example, Eximbank may exclude its Exporter Credits, Guarantee and Insurance Program from the procedures that it establishes to implement the Order. The Order also allows agencies to modify their procedures for individual actions to take account of certain important national interests and considerations which are specified in the Order. These decisions will be made by each agency for its own actions. In addition, agencies may provide for other exemptions to meet emergency circumstances or situations involving exceptional foreign policy or national security sensitivities.

The Executive Order clarifies the kinds of environmental reviews required for U.S. actions abroad, and removes uncertainties faced by the agencies and exporters. The Order states that it is not to be construed to create a cause of action. A minor fraction of the dollar volume of U.S. exports will require environmental reviews under this Order. The Order's procedures define and focus on those export actions which should receive special scrutiny because of their serious impacts on the environment and public health.

Nuclear reactors are subject to the environmental review requirements of the Order, but exports of nuclear fuel are not. The President has designated the Department of State as the lead agency to work with other relevant agencies to develop unified procedures for environmental reviews of nuclear exports covered by the Order. These procedures will provide for consideration of environmental issues without impairing U.S. reliability as a nuclear supplier.

This Executive Order supplements the United States efforts to promote international measures to protect the environment. Very recently, Secretary Vance signed the new Great Lakes Water Quality Agreement with Canada—a major element in our continuing cooperation with Canada in environmental protection. Earlier this year, in response to an administration initiative, the major shipping nations undertook stringent new obligations in the protection of the marine environment from oil pollution. The treaty embodying these obligations has been forwarded to the Senate for its action. We have made similar efforts—and progress—in the draft law of the sea treaty. In negotiations now under way, the United States has been pressing strongly for protection of porpoises by all countries involved in Pacific tuna fishing. We are currently working on a number of other international programs in the environmental area, such as

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transboundary pollution with Canada and the European states, prevention of desertification with Mexico and implementation of Senate Resolution 49. International cooperation in environmental protection has proved increasingly effective, and the United States intends to continue its strong role in this sphere.

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